IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/11/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Writ Appeal No.170 of 2001

The District Forest Officer
Sathyamangalam Division
Erode District. .. Appellant

-Vs-

M.Irulappan .. Respondent

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of His Lordship, Hon'ble Mr.Justice K.Govindarajan dated 15.12.2000 passed in W.P.No.8813 of 2000.

!For Appellant : Mr.P.Rathinavel
Government Advocate

^For Respondent : Mr.C.Selvaraj
Senior Counsel
for M/s.S.Mani

:JUDGMENT

(Judgment of this Court was made by P.D.DINAKARAN,J.)

The appellant is the respondent in the writ petition (hereinafter referred to as "the Forest Department") filed by the respondent herein (hereinafter referred to as "the writ petitioner"), challenging the power of the Forest Department to confiscate the vehicle of the writ petitioner under the provisions of the Tamil nadu Forest Act (hereinafter referred to as "the Act").

2. Concededly, action was initiated against the writ petitioner for having attempted to hunt in contravention of the provisions of the Act and the same was compounded by the Forest Department themselves invoking the power conferred under Section 54 of the Act. However, the Forest Department did not release the vehicle used for the said contravention of the provisions of the Act, but confiscated the same by an order dated 1.2.2000, which is impugned in W.P.No.8813 of 2000.

3. According to the Forest Department, the vehicle, vessels, weapon, trap or tool which are used for committing an offence are liable to be seized as per Section 39(1)(d) of the Act, and the animal or any vehicle, vessel, weapon, trap or tool used in such hunting shall be the property of the Central Government as per Section 39(1)(b) of the Act, and therefore, it is contended that the impugned vehicle of the writ petitioner, namely Jeep bearing registration No.TN-33-E-5979 was rightly confiscated by the Forest Department.

4. However, the learned Government Advocate appearing for the Forest Department admitted before the learned Single Judge that the vehicle could not be confiscated on the basis of the provisions as available in the statute. The learned single Judge, by order dated 15.12.2000 , therefore, finding that Section 39(1)(d) of the Act even though empowers the authorities under the Act to seize the vehicle, it does not empower them to confiscate the vehicle, held that the vehicle used for the alleged contravention of the provisions of the Act, after compounding the said contravention, could not be confiscated automatically and thus, directed the Forest Department to release the vehicle on production of the said order. Hence, the above writ appeal by the Forest Department.

5.1. Mr.P.Rathinavel, learned Government Advocate appearing for the Forest Department, submits that the vehicle automatically shall become the property of the Government as per Section 39(1)(b) of the Act and the confiscation of the vehicle is valid as the offence had been compounded invoking Section 54 of the Act.

5.2. Placing reliance on Section 52 of the Act, the learned Government Advocate contends that whoever attempts to contravene or abets the contravention of, any of the provisions of this Act or of any rule or order made thereunder shall be deemed to have contravened that provisions or rule or order, as the case may be, and therefore, even though the Forest Department had not tried the writ petitioner for any specific offence, as the same was compounded under Section 54 of the Act, there is no necessity to pass an independent order of forfeiture.

5.3. According to the learned Government Advocate, the order passed by the Forest Department compounding the offence becomes conclusive and therefore, the impugned jeep becomes the property of the Government. Hence, no separate proceedings are required to confiscate the vehicle.

6. Per contra, Mr.C.Selvaraj, learned Senior Counsel appearing for the writ petitioner submits that in the absence of any specific power to confiscate the vehicle, vessel, weapon, trap or tool that has been used for committing the alleged offence, the same are not liable to be confiscated.

7. We have given careful consideration to the submissions of both sides.

8.1. It is true that as per Section 39(1)(b) of the Act, any animal or any vehicle, vessel, weapon, trap or tool used in such hunting shall be the property of the Central Government and Section 39(1)(d) of the Act empowers

the authorities under the Act to seize the vehicle, vessels, weapon, trap or tool that has been used for committing the offence. But, Section 50(4) of the Act provides that any person detained, or thing seized shall forthwith be taken before a Magistrate to be dealt with according to law; and Section 51(2) of the Act provides that the Court trying the offence may order that any captive animal, wild animal, animal article trophy, uncured trophy, meat, ivory imported in to India or an article made from such ivory any specified plant or derivative thereof in respect of which the offence has been committed and any trap, tool, vehicle vessel or weapon used in the commission of the said offence be forfeited to the State Government.

8.2. On the other hand, even though Section 54 of the Act empowers the authorities to compound an offence, no power is provided under Section 54 to forfeit the properties to the State Government automatically. As per Section 54(1)(b) of the Act when any property has been seized as liable to be forfeited, to release the same on payment of the value thereof as estimated by such officer, and Section 54(2) of the Act provides that on such payment, the property other than Government property, if any, seized, shall be released, making it clear that no further proceedings in respect of the offence shall be taken against such person.

8.3. Of course, an argument is made on behalf of the Forest Department that a combined reading of Sections 39(1)(b), 54(1)(b) and 54(2) of the Act would lead to the conclusion that the vehicle, vessel, weapon, trap or tool which is used for committing of the offence would be seized and by an act of seizure they shall become the property of the Government and consequently, they are not entitled to be released as they have been excluded from the purview of release in view of the specific provision provided under Section 54(2) of the Act, which reads as follows:
"Section 54: Power to compound offence:
(1) ....
(2) On payment of such sum of money or such value, or both as the case may be, to such officer, the suspected person, if in custody, shall be discharged, and the property, other than Government property, if any, seized, shall be released and no further proceedings in respect of the offence shall be taken against such person."
(emphasis supplied)

8.4. We are unable to appreciate the above argument advanced on behalf of the Forest Department, as it would otherwise render Section 54(1)(b) of the Act redundant. From a harmonious reading of Chapters V and VI of the Act, only two procedures are permissible under the scheme of the Act, namely (i) to try the offence punishable under the Act and to pass orders with regard to the vehicle, vessel, weapon, trap or tool which is used for the commission of the offence, seized by the authorities under the Act for forfeiture of the same to the Government; or (ii) to compound the offence by exercising the power conferred under Section 54 of the Act and initiate proceedings for estimating the value of the property seized and pass appropriate orders for the release of the same. In any event, we do not see any power under the scheme of the Act to confiscate the vehicle, vessel, weapon, trap or tool automatically, merely based on the order of compounding the offence under

Section 54 of the Act.

9. Finding, therefore, no reasons to interfere with the order of the learned Single Judge dated 15.12.2000 made in W.P.No.8813 of 2000, the writ appeal is dismissed. No costs.

10. At this stage, it is brought to our notice that by an interim order dated 12.12.2002 made in W.A.M.P.No.3479 of 2002, the jeep bearing registration No.TN-33-E-5979 had already been released on condition that the writ petitioner shall furnish a bank guarantee to the satisfaction of the District Forest Officer, Sathyamangalam, for the value which shall be assessed by the concerned Motor Vehicles Inspector. In view of the dismissal of the above writ appeal, the condition imposed in the said order dated 12.12.2002 made in W.A.M.P.No.3479 of 200 2 shall now stand discharge.

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To:

The District Forest Officer
Sathyamangalam Division
Erode District.

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